



Swap Environmental Review Process

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Environmental and Cultural – State and Federal Requirements

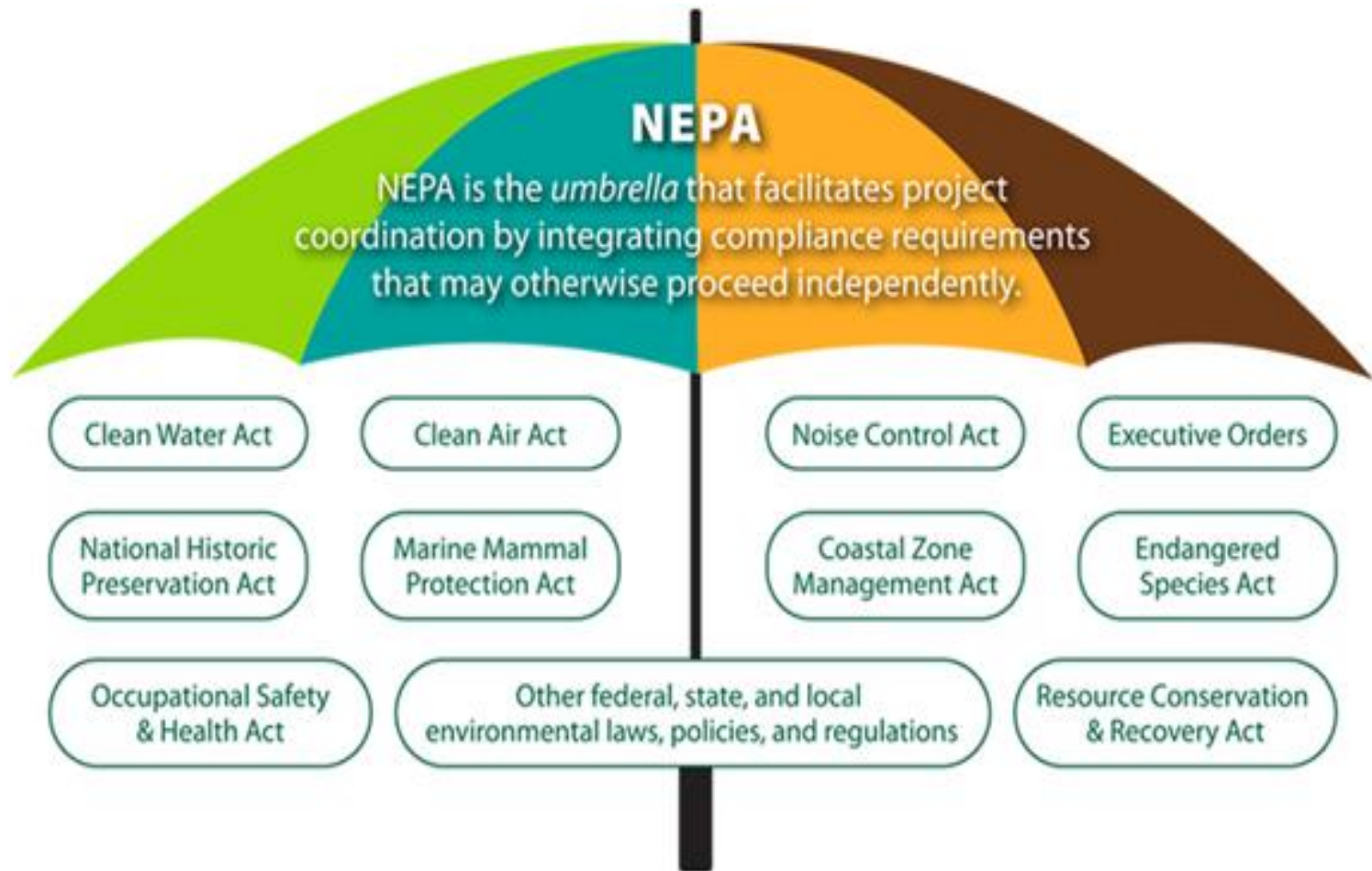
- ❑ Some environmental requirements are tied to the FHWA funding source, but NOT ALL.
- ❑ Many state and federal laws apply to all projects, regardless of the funding source.
- ❑ The FHWA Federal-Aid project development process won't apply to projects funded by the swap, but there will still be some oversight and involvement by Iowa DOT.



Environmental and Cultural – State and Federal Requirements

- ☐ National Environmental Policy Act (NEPA) – FHWA NEPA no longer needed for Swap!!
- ☐ Threatened and Endangered Species
- ☐ National Historic Preservation Act
- ☐ Clean Water Act
- ☐ Clean Air Act
- ☐ Noise Regulations
- ☐ Regulated Materials
- ☐ Wetlands, Woodlands, Parks, Prime Ag Land

National Environmental Policy Act (NEPA)



Threatened and Endangered Species – Federal Law

- ❑ 16 USC 1531 – Endangered Species Act (ESA)
- ❑ ESA Section 7 applies to FHWA funded projects. Iowa DOT consults with US Fish and Wildlife Service, (USFWS) as delegated by FHWA
- ❑ ESA Section 10 applies to non-federal funded projects and private developers
- ❑ ESA Section 7 and Section 10 are different processes



Wetlands, Woodlands, Parks, Prime Ag Land – State Law

❑ IC 314.23 – Environmental Protection

- ❑ It is declared to be in the general public welfare of Iowa and a highway purpose that highway maintenance, construction, reconstruction, and repair shall protect and preserve, by not causing unnecessary destruction, the natural or historic heritage of the state. In order to provide for the protection and preservation, the following shall be accomplished in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, and highways: Woodlands, Wetlands, Public Parks, and Prime Agricultural Lands.





Northern
Long Eared
Brown Bat



Mead's Milkweed



Higgins Eye Mussel



Topeka Shiner

I.M. 3.111

Threatened and Endangered Species

- Iowa DOT consults with the U.S. Fish and Wildlife Service (USFWS) on behalf of LPAs on Federal-aid projects through Section 7 of the Endangered Species Act.
- LPAs must follow Section 10 of the Endangered Species Act and if necessary, consultant directly with USFWS on Swap and Locally Funded projects.
- Use Iowa DOT Form 760005, “Determination of Effect for Threatened and Endangered Species for Local Public Agencies (DOE).”
 - ☐ No Effect
 - No Consultation with USFWS
 - ☐ May Affect – Not Likely to Adversely Affect
 - USFWS Consultation is required
 - If a US Army Corp of Engineer Permit is required, the Corps will consult on the LPA behalf.
 - ☐ May Affect – Likely to Adversely Affect
 - USFWS Consultation is required

LPA Guidance – T & E

INSTRUCTIONAL MEMORANDUMS

To Local Public Agencies



To: Counties and Cities

Date: February 13, 2018

From: Office of Local Systems

I.M. No. 3.111

Subject: Threatened and Endangered Species

Contents: This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to understand and comply with the requirements of the [Endangered Species Act](#) (ESA) as it applies to its listed species and critical habitats on projects. Section 7 of the Act, called "Interagency Cooperation" is the mechanism used on Federal-aid projects to ensure actions taken do not jeopardize the existence of any federally threatened or endangered species. Section 10 of the Act, called "Exceptions", is the mechanism for all non-Federal-aid projects. This I.M. also includes guidelines and procedures for compliance with 571 Iowa Administrative Code (IAC) [Chapter 77](#), Endangered and Threatened Plant and Animal Species. Section 7 procedures apply to all Federal-aid projects; Section 10 procedures apply to all non-Federal-aid projects. Iowa Code section [481B](#) and 571 IAC [Chapter 77](#) applies to all projects.

This I.M. also includes the following attachments:

[Attachment A](#) - Section 10 Process for Non-Federal-aid Projects Flowchart

[Attachment B](#) - Section 7 Process for Federal-aid Projects Flowchart

[Attachment C](#) - Avoidance and Minimization Measures for Threatened and Endangered Bats

Acronyms

BA - Biological Assessment

BMP - Best Management Practices

CE - Categorical Exclusion

DNR - Department of Natural Resources

DOE - Determination of Effect for Threatened and Endangered Species for Local Public Agencies form ([Form 760005](#))

DOT - Department of Transportation

EA - Environmental Assessment

EIS - Environmental Impact Statement

ESA - [Endangered Species Act](#)

FHWA - Federal Highway Administration

LPA - Local Public Agency

NLEB - Northern Long-eared Bat

PCN - Pre-Construction Notice

USACE - United States Army Corps of Engineers

USFWS - United States Fish and Wildlife Service

Introduction

The purpose of the ESA is to conserve "the ecosystems on which threatened and endangered species depend" and to also conserve and recover listed species. Under the law, species listed as either threatened or endangered are provided protection and regulated by the USFWS.

Section 10 of the ESA applies to non-Federal-aid projects, and allows the LPA to consult directly with USFWS. However, when a 404 Permit from the USACE is needed, the USACE will consult with USFWS on behalf of the

LPA Guidance – T & E



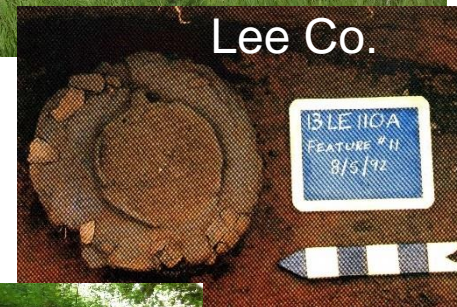
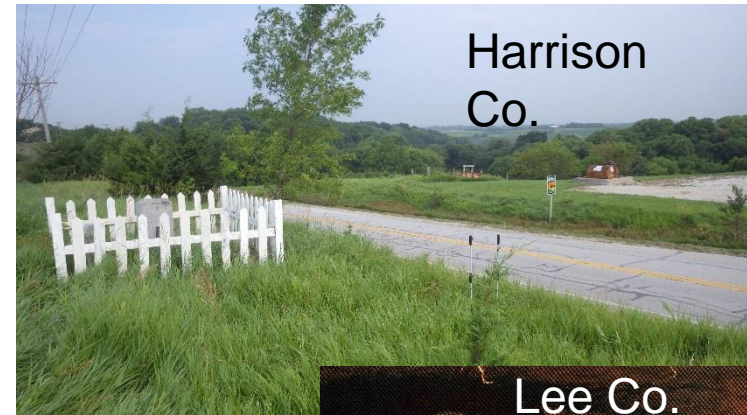
Determination of Effect for Threatened & Endangered Species For Local Public Agencies

Form 760005 (10-14)

Project Description: []	Plan Turn-in Date: []	County: []
Project No.: []	Section/Township/Range: S: [] T: [] N: [] R: []	
<p>Determine what species to look for: Check IADNR and USFWS website. Attach findings.</p> <p>List species noted on IADNR website: []</p> <p>List species noted on USFWS website: []</p> <p>Describe the habitat in your project area: Attach photos.</p> <p>[]</p>		
<p>Review habitat characteristics as described on IADNR and USFWS websites, is there habitat? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If No, mark No Effect and Section 7 is complete. Submit form with attachments.</p> <p>If Yes, move on to the next question.</p>		
<p>Will the project affect potentially suitable habitat? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If No, mark No Effect and Section 7 is complete. Submit form with attachments.</p> <p>If Yes, move on to the next question.</p>		
<p>Are there measures that can be taken to <u>avoid</u> potential impacts to habitat? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, mark No Effect with noted avoidance measures and Section 7 is complete. Submit form with attachments.</p> <p>If No, move on to the next question.</p>		
<p>Are there measures that can be taken to <u>minimize</u> potential impacts to habitat? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, mark May Affect – Not likely to adversely affect with the noted minimization measures. Complete letter exchange with IADNR and provide information to IADOT for USFWS consultation.</p> <p>If No, Contact IADOT for additional information.</p>		
DETERMINATION OF EFFECT		
<input type="checkbox"/> No Effect <input type="checkbox"/> May Affect – Not Likely to Adversely Affect <input type="checkbox"/> May Affect – Likely to Adversely Affect		
Measures to avoid or minimize		
[]		
<p>References:</p> <p><input type="checkbox"/> Natural Areas Inventory <input type="checkbox"/> IA DNR Environmental Review Letter <input type="checkbox"/> Aerial Photos <input type="checkbox"/> Soils of Concern Data</p> <p><input type="checkbox"/> IA DNR Website <input type="checkbox"/> USFWS Website <input type="checkbox"/> Other: []</p>		
Print Name of Preparer and Name of Organization: []	Date: []	
Agency Concurrence: []	Date: []	

Cultural Resources – State and Federal Laws

- ❑ Iowa Code 263B.5 – Iowa DOT shall “In letting contracts for road construction, the department shall take action to see that historical objects will not be needlessly destroyed...”
- ❑ Iowa Code 314.24 – “Cities, counties, and the department shall to the extent practicable preserve and protect ... the historic heritage of the state... archaeological sites shall be avoided...”

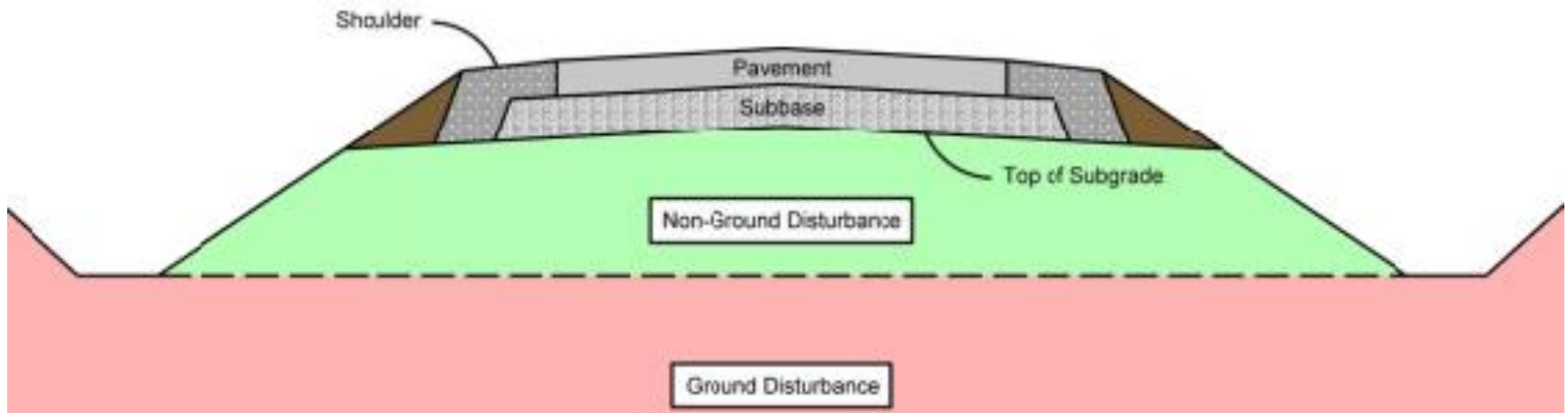


I.M. 3.114 Cultural Resources

- Iowa DOT is charged with “taking action” to ensure historical objects are not destroyed, and Cities and Counties shall “preserve and protect”.
- Cultural Resources Assessment (CRA) form – NEW
 - For projects not involving ground disturbance.
 - Designed to document a review of historic bridges, districts, structures, sites, etc.
- Cultural Resources Evaluation (CRE) – Not new
 - For projects involving ground disturbance.
 - Work with a US Secretary of Interior (SOI) Qualified Person.
 - Similar to working with the University of Iowa’s I-sites website and the Office of the State Archaeologist.
 - May result in a recommendation for a Phase 1 review.
 - The LPA would then work with the Office of Location and Environment

Ground Disturbance?

- No Ground Disturbance – CRA Form
- Ground Disturbance – Desktop Review – may need Phase 1



Cultural Resources Assessment Form



Cultural Resources Assessment Form For Local Public Agencies

Project Description: <div style="background-color: #cccccc; height: 20px; width: 100%;"></div>	Plan Turn-in Date: <div style="background-color: #cccccc; height: 20px; width: 100%;"></div>	County: <div style="background-color: #cccccc; height: 20px; width: 100%;"></div>
Project No. and Route: <div style="background-color: #cccccc; height: 20px; width: 100%;"></div>	Section/Township/Range: S <div style="background-color: #cccccc; width: 20px;"></div> , T- <div style="background-color: #cccccc; width: 20px;"></div> N, R- <div style="background-color: #cccccc; width: 20px;"></div> E	

The LPA Program for non-ground disturbing activities shall be reviewed with local Historic Preservation Commission/Historical Society (multiple members are recommended), or Professional Historian who meets the standards set forth by the Secretary of the Interior. A county map and at least one project (plan/easement) map should be retained for the project file.

Complete a review of I-Sites (<https://archaeology.uiowa.edu/i-sites>) Date:

A. Were any of the following identified within or near (100 feet) the project limits during the review?

- 1) Historic Bridge(s) ☐ Yes ☐ No If Yes, explain:
- 2) Historic District(s) ☐ Yes ☐ No If Yes, explain:
- 3) Historic Structure(s) ☐ Yes ☐ No If Yes, explain:
- 4) Historic Road (e.g. brick streets, Lincoln Highway, Red Ball Route, Convict Road)
 ☐ Yes ☐ No If Yes, explain:
- 5) Historic cemetery (pioneer cemetery, family plot, etc.)
 ☐ Yes ☐ No If Yes, explain:
- 6) Other Historic Site(s) (brick sewer, steam tunnel, historical marker, etc.)
 ☐ Yes ☐ No If Yes, explain:

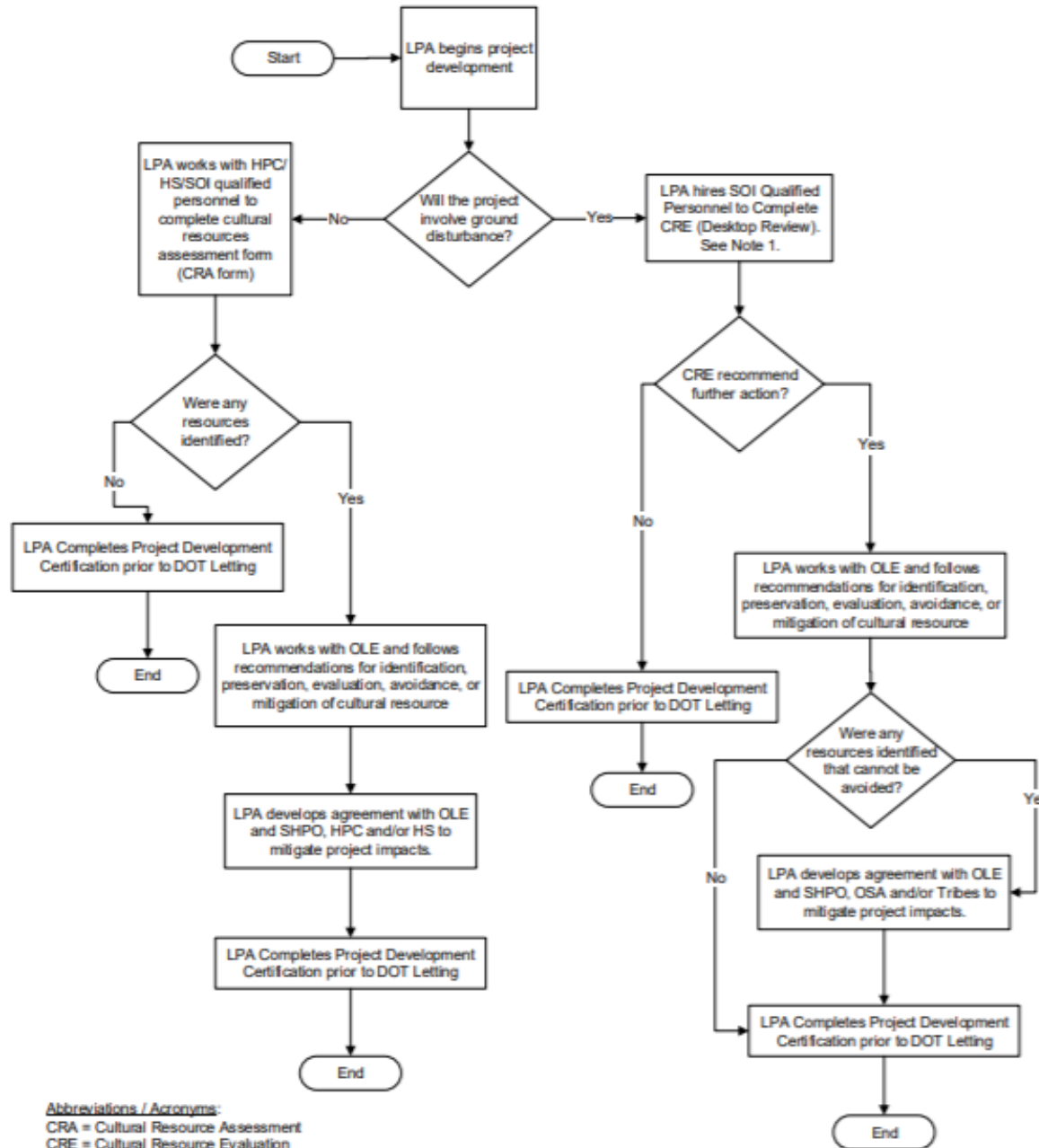
B. Is there any known controversy/objection regarding historic sites (I.C. 303.2 and I.C. 314.24)?
☐ Yes ☐ No If Yes, explain:

C. If any of the questions from A or B are marked "Yes" then complete the form by marking "Minor Impact" or "Impact" for the Cultural Resources Assessment, collect the appropriate signature and email the project information and plans, this form, and supporting information to the Iowa DOT Administering Office and the

Cultural Resources?



Cultural Resources Process for Swap Projects Flowchart



Clean Water Act – Federal Law

- ❑ 33 USC 1344 (Section 404) – requires a permit from the U.S. Army Corps of Engineers to discharge dredged or fill material in waters of the U.S.
- ❑ 33 USC 1341 (Section 401) – requires a certification from the state to discharge dredged or fill material in waters of the U.S.
- ❑ 33 USC 403 – requires authorization to construct any structure(s) within a navigable waters of the U.S. (see also Section 10 of the Rivers and Harbors Appropriation Act of 1899)
- ❑ Section 404/401 applies to all projects impacting regulated waters of the U.S.



I.M. 3.130 - 404 Permits

■ Why is a permit required?

- ☐ Impacts to water resources are governed by Section 404 of the Clean Water Act and its associated regulations, as administered by:
 - U.S. Army Corps of Engineers (USACE)
 - Environmental Protection Agency (EPA)
 - Iowa Department of Natural Resources (Iowa DNR)

■ When is a permit required?

- ☐ If any fill or dredged material will be placed in Waters of the United States (WUS)
- ☐ WUS include all waters, impoundments of waters, or tributaries of waters, such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, or natural ponds

I.M. 3.130 - 404 Permits

- What type of permit is required?
- Nationwide Permits (NWP)
 - For projects using a Nationwide Permit without an impact to a Special Aquatic Site (wetland, riffle-pool complexes, etc.) and places with less than 0.1 acres of fill into a Water of the U.S.
 - No Pre-Construction Notice (PCN) is required.
 - Wetland Delineation is still required to utilize a Nationwide Permit.
 - If a PCN is required:
 - Impacts to WUS < 0.5 acres
 - A Wetland Delineation is strongly recommended to expedite review.
 - Submit the Determination of Effect Form (Form 760005) with the PCN.
 - Submit any documentation found as part of a Cultural Resources Review.

I.M. 3.130 - 404 Permits

- What type of permit is required?
 - Nationwide Permits (NWP)
 - Previous Slide
 - Regional Permits
 - Used for activities that exceed the NWP, but don't require an Individual Permit
 - 0.5 acres < usually impacts to WUS < 1.0 acres
 - Individual Permits
 - Activities that cannot be approved under either a NWP or Regional Permit
 - Usually impacts to WUS > 1.0 acres
- For more information, see I.M. 3.130, 404 Permit Process

Summary of Environmental

- Main Things to Remember:
 - Threatened and Endangered Species
 - Fill out form, put in file, unless affecting T&E
 - Cultural Resources
 - Non Ground Disturbance – CRA Form
 - Ground Disturbance – CRE
 - 404 Permit from USACE
 - Apply for Permit if necessary
 - Project Development Certification (PDC)

QUESTIONS?

